

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

DEFENDANTS' MOTION TO SEAL

Pursuant to Rule 26 of the Federal Rules of Civil Procedure and Local Civil Rule 5(C), Defendants (“Cox”) move the Court to enter an order allowing Cox to file under temporary seal two exhibits (Exhibits A and B) supporting Defendants’ Opposition to Plaintiffs’ June 21, 2019 Motion to Compel (ECF No. 182). These exhibits contain documents and information that have been designated under the Stipulated Protective Order in this case (ECF No. 58) (the “Protective Order”) by Defendants as Highly Confidential – Attorneys’ Eyes Only.

Cox moves the Court to enter an order allowing Cox to file under seal Exhibits A and B to the Opposition which were designated by Defendants as “Highly Confidential – Attorneys’ Eyes Only” pursuant to the Protective Order, because it constitutes or discusses confidential business information belonging to Defendants. As explained below, the procedural prerequisites for sealing have been met.

1. Under the local rules, a party may file a motion to seal together with the sealed filings. E.D. VA. CIV. R. 5(D). Thereafter, the Court will determine whether the sealing is proper. Cox follows that practice in this motion.

2. Under current Fourth Circuit law, the district court must do the following prior to sealing any court records:

(1) give public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.

Ashcraft v. Conoco, Inc., 218 F.3d 282, 288 (4th Cir. 2000). Each procedural requirement has been met here by Cox's sealing motion.

3. To satisfy the first requirement, the Court must provide notice of a request for sealing in the court record and provide interested persons with "an opportunity to object." *In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984). Individual notice is not required, and the Court may give adequate notice either by "notifying the persons present in the courtroom of the request to seal" at the time of the hearing, or by "docketing [the sealing request] in advance of deciding the issue." *Id.* In accordance with Local Civil Rule 5 procedure, this sealing motion was publicly docketed in advance of the hearing, satisfying the first requirement.

4. To meet the second requirement, the Court must consider using redactions or limited sealing (either in scope or duration) in lieu of permanent, blanket sealing. To satisfy the second requirement, Cox used limited sealing measures—viz., sealing certain exhibits, but not the entire filing.

5. To meet the third requirement, the Court must make specific findings, supported by the record, that justify sealing under the applicable standard. Cox meets the third requirement because the exhibits contain confidential proprietary information concerning Cox's business decisions and computer systems.

Based on the foregoing, the motion to seal should be granted. A proposed order is submitted herewith.

Dated: June 26, 2019

Respectfully submitted,

/s/ Thomas M. Buchanan

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2019, the foregoing was filed and served electronically by the Court's CM/ECF system upon all registered users.

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